IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.4151 of 2006

Date of Decision : 23.08.2007

Bharat Singh and another .....Appellants

versus

Ishwar and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.R.N.Lohan, Advocate for the appellants.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The defendants are in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit for declaration to the effect that the plaintiffs are owners in possession of 1/9th share of the agricultural land measuring 10 kanals 16 marlas, was decreed.

The land measuring 53 kanals 16 marlas was allotted by the State Government to the Harijans on 9.2.1969. The said land is inclusive of the land measuring 10 kanals 16 marlas, the subject of the present suit. Pohlu, predecessor in-interest of the plaintiffs was allotted land measuring a kanal 4 marlas as a member of the Society formed by the Harijans. He was owner in possession of the land to the extent of 1/9th share.

It has been found that the members of the Society, including Pohlu, effected partition of the suit land. But Pohlu was not made party to the suit where a decree on the basis of partition was passed by the Court on 13.1.1987. When the legal heirs of Pohlu came to know about the decree passed, they filed a Civil Suit No.209 dated 28.5.1990, wherein a decree was passed on 14.9.1991 and plaintiff No.1 and Soran, predecessor of the

other plaintiffs were declared co-owners in joint possession in equal shares of 1/9th share in the suit land. The defendants-appellants are the purchasers of the land allotted to the Harijans, other than Pohlu and Soran Singh and it was asserted that Pohlu was neither owner nor in possession of the suit land and that Pohlu was not member of the Harijan Society. It has been found that the decree dated 14.9.1991 is binding on the defendants as their co-owner purchasers were the party in the said decree.

Learned counsel for the appellants has vehemently argued that the Courts below have erred in law in granting decree in favour of legal heirs of Pohlu and Soran Singh. The said Pohlu and Soran Singh are not proved to be owners of the land in dispute and that decree on the basis of which the present suit has been filed, is inadmissible in evidence for want of registration. It is further argued that the Courts below have set-aside the entire purchase of the land by the appellants, although the plaintiffs have sought declaration in respect of their 1/9th share in the land i.e. 1 kanal 4 marlas.

Having heard learned counsel for the appellants, I do not find any ground to interfere in the present second appeal. It is apparent from the perusal of Exhibit P-1, that Pohlu and Soran Singh are one of the members of the Society in whose favour the mutation was sanctioned consequent to the allotment. Later on, in Civil Suit No.24 of 1987, seven proprietors got the land partitioned, but Pohlu and Soran Singh were not impleaded, though they were allottees. The decree passed in the absence of the plaintiffs is Exhibit P-2. The said decree was set-aside in a suit filed by the predecessors-in-interest of the plaintiffs on 14.9.1991. It was held therein that the plaintiffs are owners of the land measuring 1 kanal 4 marls.

Since the plaintiffs have been found to be owners of the land, therefore, the decree dated 14.9.1991 does not create any new right in favour of the plaintiffs. The plaintiffs became owners of the suit land in the year 1969-70 when the mutation of ownership was sanctioned in their favour. Therefore, the decree dated 14.9.1991 does not require any registration.

However, the argument that the entire sale could not be set-aside, in fact, arises out of the pleadings of the plaintiffs themselves. They have claimed right to the extent of 1/9th share in the land measuring 10 kanals 16 marlas. Therefore, over and above, the shares of the plaintiffs in the aforesaid land are null and void. The effect of the decree is that the interest of the plaintiffs in the suit land cannot be jeopardize by virtue of sale in favour of the defendants.

Consequently, I do not find any material illegality or irregularity in the findings recorded by the Courts below which may give rise to any substantial question of law for consideration of this Court in second appeal. The present appeal is dismissed with a clarification that the sale deeds in favour of the appellants are null and void to the extent of 1/9th share of the plaintiffs.

23-08-2007 **(HEMANT GUPTA)**
*mohinder **JUDGE**